(80)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.49 of 2000

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosahep Deshmukh, J.

Petitioner	:	1.	Union of India, Through the Divisional Railway Manager, S.E.Railway, Bilaspur.
	:	2.	Sr. Divisional Personnel Officer, S.E. Railway, Bilaspur, Chhattisgarh.

VERSUS

Respondents	:	1.	Sri S.P.Mondal, S/o Late Prayag Mondal, House No.302, Ward No.19, Gurunanak Nagar, Durg/Chhattisgarh.
	:	2.	The Central Administrative Tribunal, Bench at Jabalpur (MP), Through its Registrar.

Shri K.M.Ansari, Counsel for the petitioners.

Shri S.N.Nande, Counsel for respondent No.1

ORAL ORDER

(Passed on 3rd January 2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

The Union of India represented by the Divisional Railway Manager, South Eastern Railway, Bilaspur and the Senior Divisional Personnel Officer, South Eastern Railway, Bilaspur, being aggrieved by the order of the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (for short 'the Tribunal') dated 4.8.2000 passed in Review Application No. 48/1985, have preferred this writ petition under Articles 226 and 227 of the Constitution of India.

2. The back ground facts leading to the filing of this writ petition be noted at the first instance and they, in brief, are as follows.

The respondent No. 1, while serving as Senior Booking Clerk at Durg, was dismissed from service by order dated 12.2.1975 issued by the then Senior Divisional Commercial Superintendent, South Eastern Railway, Bilaspur as a measure of penalty on the ground that some unpunched railway tickets which were reported missing were found in his railway quarter at Durg when railway quarter was raided by Central Bureau of Investigation.

3. Being aggrieved by the above action of the disciplinary authority, the 1st respondent instituted suit No. 18-A/1978 in the Court of Civil Judge, Class-II, Bilaspur for declaration that the punishment imposed on him by the disciplinary authority is a nullity in the eye of law. After the constitution of the Tribunal, the said suit was transferred to the Tribunal and the same was numbered as Case No. T.A. 129/1987. The Tribunal having found that the enquiry conducted by the disciplinary authority suffered from grave substantial procedural flaws, set aside the penalty order and directed reinstatement of the 1st respondent into the service within three months from the date of communication of the order, by its judgment and order dated 19th January 1999. The Tribunal while doing so, directed the competent authority in the Department to pass the appropriate order under Fundamental Rule 54-A for regulating the intervening period, that is to say, between the date of removal from service and the date of reinstatement of the 1st respondent into service, in pursuance of the order made by the Tribunal. The Tribunal, further, reserved liberty to the Department to conduct a fresh enquiry against 1st respondent into the charges framed against him in accordance with law. The Department, however, did not conduct any fresh enquiry as permitted by the Tribunal.

5. As directed by the Tribunal, the Department without issuing notice to the 1st respondent and without giving him any opportunity of being heard passed an order under Fundamental Rule 54-A denying 50% of wages to the 1st respondent during the intervening period. Being aggrieved by the said order made by the Department under Fundamental Rule 54-A, the first respondent filed O.A. No. 397/1992 before the Tribunal seeking its intervention. The Tribunal, having opined that before passing the order under Fundamental Rule 54-A, the Department ought to have issued notice to the 1st respondent and heard him, set aside the order made by the Department and directed the Department to issue notice, consider the representation of the 1st respondent and then pass appropriate order, vide its order dated 5th January, 1994. We are told that in pursuance of the above direction of the Tribunal, the Department having issued notice to the 1st respondent passed an order on 7.3.1994, again denying 50% of wages to 1st respondent and against the said order, the 1st respondent instituted O.A.No.139/1995 before the Tribunal. That application was opposed by the Department. The Tribunal, by its order dated 20th July, 1995, disposed of the said O.A. reserving liberty to the 1st respondent to seek review of the order dated 5th January, 1994. Accordingly, the petitioners filed Review Application No. 48/1995 for review of the order dated 5.1.1994 made in O.A.No.397/92. The Tribunal by its order dated 4th August 2000 allowed the Review Application and directed the petitioners herein to regularize the intervening period from the date of removal of 1st respondent to the date of his reinstatement in terms of F.R. 54-A and directed that 1st respondent should be paid full pay and allowances.

6. Being aggrieved by the above order, the Department has preferred this Writ Petition under Articles 226/227 of the Constitution of India.

7. Learned standing counsel appearing for the petitioners would place before us the following two contentions for our consideration:

(i) that since the Tribunal set aside the penalty order by its order dated 19th January, 1990 on technical grounds, the 1st respondent is not entitled to full salary and allowances during the intervening period in terms of the provisions of Clause (i) of sub-rule (2) of F.R. 54-A; and

(ii) that the Tribunal ought not to have issued the kind of direction it has issued in the review order.

In other words, according to the learned standing counsel, the impugned order made in the Review Application No.48/1995 is one without authority of law. Learned counsel for the first respondent, per contra, would support the impugned order made by the Tribunal in the Review Application No.48/1995.

8. Having heard the learned counsel for the parties, we do not find any merit in either of the two contentions urged by the learned standing counsel for the petitioners. We have carefully perused the original records placed before us particularly the judgment of the Tribunal dated 19th January 1990 made in T.A.No.129/1987. As could be seen from that order, the Tribunal has set aside the penalty order and directed reinstatement of the 1st respondent into service not on the basis of technical grounds but for substantial flaws in the very procedure adopted by the Department in conducting departmental enquiry against the 1st respondent. It is pointed out that 1st respondent was denied of the assistance of Shri A.K.Awasthi as his defence representative to participate in the departmental enquiry. The Tribunal has also pointed out that even the relevant documents sought by the 1st respondent delinquent were not made available to him in the departmental enquiry. Virtually, the so-called enquiry conducted by the Department was totally perfunctory and farcical and in utter violation of principles of natural justice and fair play in action.

That was exactly the reason why the Tribunal reserved liberty to the Department to conduct fresh enquiry against the 1st respondent delinquent, if they so desire, but, the Department for the reasons best known to it, did not conduct enquiry against the 1st respondent. Having accepted the above judgment of the Tribunal as correct and valid one, it would not lie in the mouth of the Department now to contend that the 1st respondent was exonerated from the charge on technical grounds, and therefore, he is not entitled to full salary and allowances during the intervening period by virtue of the provisions of Clause (i) of sub-rule (2) of F.R. 54-A. Strictly speaking, that provision has no application to the facts of this case. We would say this, because, the enquiry conducted by the Department culminating in the removal of 1st respondent from service is not an enquiry at all in the eye of law being the one done in flagrant violation of principles of natural justice and fair play in action.

9. Looking from another angle also, the denial of 50% of salary and allowances to the 1st respondent during intervening period would violate the Article 14 postulates. If the action of the department is upheld, it would tantamount to condemning 1st respondent for no fault of his and that too unheard.

10. In the result and for the foregoing reasons, writ petition is dismissed, however, with no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Sd/-
Chief Justice

Anjan